IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

Crl.MC.No. 90 of 2007()

MP.3410/2006 of JUDL.MAGISTRATE OF FIRST CLASS-I, ERNAKULAM
CRIME NO.293/2006 OF ERNAKULAM TOWN NORTH POLICE STATION

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PETITIONER:

MAHINDRA AND MAHINDRA FINANCIAL SERVICES LTD., REGIONAL OFFICE, 2ND FLOOR, KALYANI TOWERS, DESHABHIMANI ROAD, KALOOR, KOCHI 17, REPRESENTED BY ITS AUTHORISED SIGNATORY RAJESH .C.

BY ADV. SRI.SOORAJ T.ELENJICKAL
SRI.M.A.JOSEPH MANAVALAN

RESPONDENTS:

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1. STATE OF KERALA, THROUGH CIRCLE INSPECTOR OF POLICE, ERNAKULAM TOWN NORTH POLICE SATION, REPRESENTED THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. PARAMESWARAN NAMBOOTHIRI, KRISHNA NIVAS, PERINGARA P.O. THIRUVALLA.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB
SRI.C.S.MANILAL

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.90 of 2007

Dated this the 28th day of June 2007

O R D E R

The petitioner is a financier. The second respondent had availed a loan facility from the petitioner and the amounts were obtained by the second respondent for purchase of an ambassador car bearing registration No.KL 3G-8911. That vehicle was in the possession of the second respondent. He is the registered owner of the vehicle. The petitioner filed a private complaint before the learned Magistrate alleging commission of the offences punishable under Sections 408 and 420 I.P.C by the second respondent in respect of the vehicle. That complaint was referred by the learned Magistrate to the police. A crime was registered. Investigation was conducted. The vehicle was seized by the police and was produced before the learned Magistrate. Before the learned Magistrate, the petitioner alone applied for interim release of the vehicle under Section 451 Cr.P.C. In the absence of any other rival claimant, the learned Magistrate directed the release of the vehicle to the petitioner subject to conditions. The learned Magistrate, by the impugned order (a copy of which is produced as Annexure 2) did not impose any other conditions but directed that the release shall be only on condition that a no-

objection certificate from the second respondent is produced by the petitioner.

2. The learned Magistrate did so direct because the learned Magistrate thought that the petitioner had unfairly resorted to the criminal adjudicatory process and also made use of the police machinery to effect seizure of the vehicle. Dissatisfied with such conduct on the part of the petitioner, the learned Magistrate had imposed the condition that the petitioner must produce a no-objection certificate from the second respondent, the registered owner of the vehicle.

3. The petitioner finds himself in a catch-22 situation. He cannot get release of the vehicle unless the registered owner, the second respondent accedes to that course. The second respondent is not amenable to give such a certificate. What happens as a consequence is that the vehicle continues in the custody of the court exposed to sun and rain. In spite of the order dated 28/7/2006, the petitioner is not able to get the vehicle to his custody even now. The petitioner is prepared to abide by any other reasonable condition. He only prays that he may be permitted to take delivery of the vehicle and avoid further damage and deterioration of the vehicle which is exposed to sun and rain in the custody of the court. Any appropriate and reasonable conditions may be imposed. The learned counsel for

the petitioner reminds the court of the dictum in Sunderbhai Ambalal Desai v. State of Gujarat [SC 2003(2) KLT 1089]. The learned counsel submits that the present arrangement under which the vehicle is exposed to sun and rain indefinitely may be avoided which works out pernicious consequences for both the petitioner and the second respondent. Notice was given. The second respondent has entered appearance. Significantly, the second respondent has not so far chosen to claim return of the vehicle to his custody. That there are at least some instalments defaulted is not disputed. The petitioner, as per the contract, has a right of seizure of the vehicle is also not disputed.

4. All courts must show anxiety and eagerness to avoid properties in their custody suffering damage and deterioration on account of exposure to sun and rain. Courts cannot be oblivious to the plight of the parties. If the present situation were permitted to continue, the vehicle which has been lying in custody of the court for the past about one year will become worthless in a short period of time. I am, therefore, of the opinion that this court must alertly stipulate an arrangement under which the vehicle can be left to the custody of one of the parties.

5. Who among the parties will be the most competent is the next question to be decided. I am in agreement with the learned

Magistrate that the conduct of the petitioner in resorting to the criminal adjudicatory process to effect seizure of the vehicle is unsatisfactory. Be that as it may, I am certainly of the opinion that the petitioner being the only claimant and release of the vehicle to the petitioner being the only course open to the courts to avoid unnecessary damage and deterioration of the vehicle, the same can be released to the petitioner under appropriate and reasonable terms.

6. The insistence on the condition that the second respondent must give the no-objection certificate when the second respondent asserts that he is not willing to do the same is certainly not just and proper. I am, in these circumstances, satisfied that subject to appropriate terms, this court can direct release of the vehicle to the petitioner.

7. In the result:

(a) This petition is allowed. The condition imposed in the impugned order that the petitioner must produce no-objection certificate of the second respondent is set aside.

(b) It is directed that the vehicle shall be released to the petitioner on the following terms and conditions:

i) The petitioner shall execute a bond for Rs.1.75 lakhs (Rupees one lakh seventy five thousand only) (which the learned counsel for the second respondent claims to be the value of the

vehicle now) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate. That value, I state, has been accepted only to avoid any further delay.

ii) In the bond, the petitioner shall undertake that the vehicle shall be kept in good condition and the same shall not be disposed of, dismantled or parts removed by the petitioner until further orders of the court or until he obtains the requisite order from the civil court to dispose of such property.

iii) Vehicle shall be released after taking an inventory and photograph of the same.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007